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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,102	03/31/2004	Edward K. Y. Jung	0104-003-004-000000	9902
80118 7590 11/17/2008 Constellation Law Group, PLLC P.O. Box 220 Tracyton, WA 98393				
EXAMINER				
SURVILLO, OLEG				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
11/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/816, 102

**Applicant(s)**

JUNG ET AL.

**Examiner**

OLEG SURVILLO

**Art Unit**

2442

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-29.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): See Continuation Sheet  
13. ☒ Other: See Continuation Sheet

/Douglas B Blair/  
Primary Examiner, Art Unit 2442

Continuation of 3. NOTE: As to proposed amendment to independent claims 1, 13, 25, and 26, and also dependent claims 4-6, 10, 11, 13-18, 22-26, and 28, this amendment would change the scope of the invention and would necessitate further consideration and search.

Continuation of 12: The listed documents in the Information Disclosure Statements dated 07/11/08, 09/12/08, and 09/19/08 have been considered by making appropriate notations on the attached forms. However, one of the IDSs dated 09/12/08 has not been considered because Applicants failed to provide a statement as specified under 37 CFR 1.97(e).

Continuation of 13. Other: Regarding objection to an abstract, Applicant's amendment to the abstract of the disclosure has been fully considered and is sufficient. Therefore, if amendment was entered, objection to the abstract would have been withdrawn.

Regarding objection to the specification as containing disclosure entirely outside the bounds of the claims, Applicants requested that the Office provide statutes, regulations or sections of the MPEP to support the office's objection. In response to this argument, Applicants are advised to carefully review the last Office action, especially at pages 3 and 11 where requested sections of the MPEP were already supplied for Applicant's convenience.

Regarding the objection of claims 4, 6, 10, and 11, Applicants' amendment has been fully considered and is sufficient. Therefore, if amendment was entered, objection would have been withdrawn.

Regarding the rejection of claims 13-24 under 35 U.S.C. 101 as being directed to non-statutory subject matter, Applicant's arguments have been fully considered and are persuasive. Applicants argued at page 50 of the Remarks, as filed, that: "claim 13 has been amended to no longer recite a means plus function claim rendering the office's rejection moot". This argument is persuasive to the extent that claim 13 no longer recites a "means plus function" language and therefore no longer invokes 35 U.S.C. 112, sixth paragraph. However, whether or not a claimed "transmitter" is a physical element of the system cannot be determined at this time because Applicants failed to cite a specific portion of the specification where the proper antecedent basis for "a transmitter controlled by a second mote to transmit at least a part of an aggregate of one or more mote-addressed content indexes of a first set of motes, wherein the first set of motes excludes the second mote" can be found. Therefore, 35 U.S.C. 101 rejection is maintained pending Applicants' response providing antecedent basis for the claimed terminology. Applicants further reiterate the discussion of In re Alappat case, presented in the previously-submitted remarks without addressing Examiner's response presented at pages 4-5 of the last Office action. Since this issue was already addressed in the last OA, Applicants' discussion at pages 51-52 of the current remarks is not addressed as being redundant.

Regarding the rejection of claims 13-24 under 35 U.S.C. 112, first paragraph, Applicants have amended claim 13 to delete "means" recitation and submitted that claim 13 is not to be interpreted to invoke 35 U.S.C. 112, sixth paragraph and that the rejection is moot. Therefore, if amendment was entered, the rejection would have been withdrawn.

Regarding the rejection of claims 25 and 28 under 35 U.S.C. 112, second paragraph, Applicants have amended claims 25 and 28 to remove ambiguous claim language, therefore, rendering previously-made rejection moot. If amendment was entered, the rejection would have been withdrawn.

Regarding the rejection of claims 1-29 under 35 U.S.C. 103(a), Applicant's arguments are directed towards newly added limitations and therefore require further consideration. As to any arguments not specifically addressed they are the same as those discussed above.